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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,558	06/24/2003	David K. Sanderson	ENDOV-64894	1254
24201	7590	05/28/2004		
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045				
			EXAMINER FASTOVSKY, LEONID M	
			ART UNIT 3742	PAPER NUMBER

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,558

Applicant(s)

SANDERSON, DAVID K.

Examiner

Leonid M Fastovsky

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/24/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 24-28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Reydel et al (2001/0044595).

Reydel teaches an introducer apparatus 10 comprising a first medical device through the passageway 22 and a second medical device 62 passing through the passageway 58 (Fig. 25) and an elongate member 12, operating inherently as dilator because it has the same structure as claimed by applicant, and having a length and includes the structure to separate the first and the second medical devices (page 10, [81]). The apparatus further comprises a sheath 13 sized to receive the elongated member 12, the elongated member comprising a proximal end 19, a terminal end 77, and two grooves 93 (Fig. 16) each extending longitudinally along the elongate member 12.

As for claim 30, the sheath 13 further comprises a proximal end 13 and a distal end 64 and a proximal end defining a handle 18.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 29 and 31- 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydel.

Rydel teaches substantially the claimed invention including the elongated member 12 that is integrally attached to the sheath 13 (page 4, [50]), and the sheath 13 is split along its length (Fig. 11, page 7, [67]). However, Rydel does not teach the lock to attach the member to the sheath, the handle being fractured in two pieces, and the sheath with perforation extending along the length. It would have been obvious to one having ordinary skill in the art to modify Rydel's invention to include a lock, and a sheath having extending perforation in Rydel's apparatus because it performs the functions of locking the elongating member with the sheath, and splitting of sheath along the length, and to make a split handle as a conventional device in Rydel's apparatus.


Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 4947864 (inner member 12 and sheath 34), 6159195 (tube 114, sheath 216) 6152909 (elongated member 130 and sheath 140)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M Fastovsky whose telephone number is 703-306-5482. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leonid M Fastovsky
Examiner
Art Unit 3742

lmf